

1 KAMALA D. HARRIS
Attorney General of California
2 WILLIAM C. KWONG
Supervising Deputy Attorney General
3 ALICIA A. BOWER
Deputy Attorney General
4 State Bar No. 287799
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-4285
6 Fax: (415) 703-5843
E-mail: Alicia.Bower@doj.ca.gov
7 *Attorneys for Defendants G. Branch, P. Santiago,*
C. Hancock, and J. Vera
8

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION
12

13 **FIKRI BAYRAMOGLU,**

14 Plaintiff,

15 v.

16 **MATTHEW CATE, et al.,**

17 Defendants.
18
19

C 13-1094 YGR (PR)

**ANSWER TO COMPLAINT AND
DEMAND FOR JURY TRIAL**

Judge: The Honorable Yvonne
Gonzalez Rogers
Action Filed: March 11, 2013

20 Defendants G. Branch, P. Santiago, C. Hancock, and J. Vera answer Plaintiff Fikri
21 Bayramoglu's March 11, 2013 complaint as follows:

22 **I. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

23 A. Answering Section I ("Exhaustion of Administrative Remedies"), paragraph A of the
24 Complaint, Defendants admit that Plaintiff is currently housed at the California Men's Colony
25 (the CMC).

26 B. Answering Section I, paragraph B, Defendants admit that the CMC has grievance
27 procedures.
28

1 C. Answering Section I, paragraph C, Defendants admit that Plaintiff presented some of
2 the facts in the Complaint through the grievance procedure. Defendants deny that all of the facts
3 in the Complaint were properly presented through the grievance procedure.

4 D. Answering Section I, paragraph D,

5 1. Subsection 3, Defendants admit that Plaintiff pursued inmate appeal numbers
6 CTF-S-08-02077; CTF-08-02879; CTF-08-03409; CTF-08-03511; and CTF-08-03026 at the
7 second formal level of review.

8 2. Subsection 4, Defendants lack sufficient knowledge to admit or deny Plaintiff's
9 allegations at this time, and therefore deny them on that basis.

10 E. Answering Section I, paragraph E, Defendants admit that Plaintiff appealed inmate
11 appeal numbers CTF-S-08-02077; CTF-08-02879; CTF-08-03409; CTF-08-03511; and CTF-08-
12 03026 to the highest level available. Defendants deny Plaintiff appealed all of the claims alleged
13 in the Complaint to the highest level available.

14 **II. PARTIES**

15 A. Answering Section II ("Parties"), paragraph A of the Complaint, Defendants admit
16 that Fikri Bayramoglu (C-54604) is identified as the Plaintiff in this lawsuit and that his current
17 address is CMC, P.O. Box 8103, San Luis Obispo, CA 93409-8103.

18 B. Answering Section II, paragraph B, Defendants admit Plaintiff's allegations with
19 respect to Defendants Hancock, Vera, Santiago, and Branch. To the extent that Plaintiff's
20 allegations involve parties dismissed from the present case under the Court's October 30, 2013
21 Order of Partial Dismissal and Service (Docket No. 8), Defendants deny the allegations relative to
22 those dismissed parties on that basis.

23 **III. STATEMENT OF CLAIMS**

24 A. Answering Section III ("Statement of Claim"), page 3 of the Complaint, Defendants
25 admit that Plaintiff filed a "Staff Complaint" regarding Sergeant E. Banales, inmate appeal log
26 number CTF-S-08-02077. Defendants also admit that a CDC 114 was issued to Plaintiff and was
27 authorized by Defendant Hancock, but deny that Defendant Hancock retaliated against Plaintiff in
28 any way in issuing this CDC 114. Defendants deny that Defendant Hancock issued a "bogus

1 CDC 114/115” to Plaintiff. Defendants further deny that Defendant Vera retaliated against
2 Plaintiff in any way. Defendants lack sufficient knowledge to admit or deny the remainder of
3 Plaintiff’s allegations, and therefore deny them on that basis.

4 B. Answering Section III, continued at Plaintiff’s numbered page 1 of 8, paragraph I,
5 Defendants admit Plaintiff’s allegations.

6 C. Answering Section III, continued at Plaintiff’s numbered page 1 of 8, paragraph II,
7 Defendants admit Plaintiff’s allegations.

8 D. Answering Section III, continued at Plaintiff’s numbered page 1 of 8, paragraph III,
9 Defendants deny Plaintiff’s allegations.

10 E. Answering Section III, continued at Plaintiff’s numbered page 1 of 8, paragraph IV,
11 Defendants assert that the Court in this matter dismissed Plaintiff’s claims against Defendant
12 Matthew Cate. Defendants therefore deny the allegations relative to Defendant Cate on that basis.
13 Defendants lack sufficient knowledge to admit or deny Plaintiff’s remaining allegations, and
14 therefore deny them on that basis.

15 F. Answering Section III, continued at Plaintiff’s numbered page 2 of 8, paragraphs V
16 and VI, Defendants assert that the Court in this matter dismissed Plaintiff’s claims against
17 Defendant Ben Curry. Defendants therefore deny the allegations relative to Defendant Curry on
18 that basis. Defendants lack sufficient knowledge to admit or deny Plaintiff’s remaining
19 allegations, and therefore deny them on that basis.

20 G. Answering Section III, continued at Plaintiff’s numbered page 2 of 8, paragraph VII,
21 Defendants admit Plaintiff’s allegations.

22 H. Answering Section III, continued at Plaintiff’s numbered page 3 of 8, paragraph VIII,
23 Defendants admit that, on June 9, 2008, Plaintiff was issued a CDC 114 based on threatening
24 comments Plaintiff made to Sergeant E. Banales in a CDC 602 dated May 21, 2008. Defendants
25 further admit that this CDC 114 was authorized by Defendant Hancock. Defendants deny that
26 Defendant Hancock authorized this June 9, 2008 CDC 114 with a malicious or retaliatory
27 intention. Defendants lack sufficient knowledge to admit or deny the remainder of Plaintiff’s
28 allegations and therefore deny them on that basis.

1 I. Answering Section III, continued at Plaintiff's numbered page 3 of 8, paragraph IX,
2 Defendants admit Plaintiff's allegations.

3 J. Answering Section III, continued at Plaintiff's numbered page 3 of 8, paragraph X,
4 Defendants admit that the June 9, 2008 CDC 114 issued to Plaintiff assessed 60 days forfeiture of
5 prison credits. Defendants deny that the June 9, 2008 CDC 114 was a "bogus trumped-up-
6 charge," or that Defendant Vera believed as such at any point. Defendants lack sufficient
7 knowledge to admit or deny the remainder of Plaintiff's allegations, and therefore deny them on
8 that basis.

9 K. Answering Section III, continued at Plaintiff's numbered pages 3–4 of 8,
10 paragraph XI, Defendants admit that Defendant Santiago was an Appeals Coordinator at the
11 California Training Facility (CTF) in Soledad, California, and was a resident of California during
12 the times relevant to the Complaint. Defendants lack sufficient knowledge to admit or deny the
13 remainder of Plaintiff's allegations and therefore deny them on that basis.

14 L. Answering Section III, continued at Plaintiff's numbered page 4 of 8, paragraph XII,
15 Defendants admit that Defendant Branch is a resident of California, and that he served as a
16 Correctional Officer at the CTF in Soledad, California. Defendants lack sufficient knowledge to
17 admit or deny the remainder of the allegations at this time, and therefore deny them on that basis.

18 M. Answering Section III, continued at Plaintiff's numbered page 5 of 8, paragraph XIII,
19 Defendants admit Plaintiff's allegations.

20 N. Answering Section III, continued at Plaintiff's numbered pages 5–6 of 8,
21 paragraph XIV, Defendants assert that the Court in this matter dismissed Plaintiff's claims against
22 Defendant C. B. Tucker. Defendants therefore deny the allegations relative to Defendant Tucker
23 on that basis. Defendants lack sufficient knowledge to admit or deny Plaintiff's remaining
24 allegations, and therefore deny them on that basis.

25 O. Answering Section III, continued at Plaintiff's numbered pages 6–7 of 8,
26 paragraph XV, Defendants assert that the Court in this matter dismissed Plaintiff's claims against
27 Defendant K. Huffman. Defendants therefore deny the allegations relative to Defendant Huffman
28

1 on that basis. Defendants lack sufficient knowledge to admit or deny Plaintiff's remaining
2 allegations, and therefore deny them on that basis.

3 P. Answering Section III, continued at Plaintiff's numbered page 7 of 8, paragraph XVI,
4 Defendants assert that the Court in this matter dismissed Plaintiff's claims against Defendant
5 H. K. Huihui. Defendants therefore deny the allegations relative to Defendant Huihui on that
6 basis. Defendants lack sufficient knowledge to admit or deny Plaintiff's remaining allegations,
7 and therefore deny them on that basis.

8 Q. Answering Section III, continued at Plaintiff's numbered pages 7–8 of 8,
9 paragraph XVII, Defendants deny Plaintiff's allegation that Defendants had the purpose or intent
10 of subjecting Plaintiff to cruel and unusual punishment. Defendants deny that they violated
11 Plaintiff's First, Eighth, or Fourteenth Amendment rights under the U.S. Constitution.
12 Defendants lack sufficient knowledge to admit or deny the remainder of Plaintiff's allegations at
13 this time, and therefore deny them on that basis.

14 **IV. RELIEF**

15 Answering Section IV ("Relief"), page 3, Defendants deny that Plaintiff is entitled to any
16 relief for any claim brought in the Complaint.

17 **AFFIRMATIVE DEFENSES**

18 AS SEPARATE AND AFFIRMATIVE DEFENSES, Defendants allege as follows:

19 1. Defendants acted within the scope of reasonable discretion, with due care, and good
20 faith in fulfillment of their responsibilities under all applicable statutes, rules, regulations, and
21 practices; within the bounds of reason under all circumstances known, and with the good faith
22 belief that their actions comported with all applicable federal and state law. Defendants are thus
23 entitled to immunity, including qualified immunity.

24 2. Plaintiff's Complaint fails to state a cause of action against Defendants.

25 3. Plaintiff's Complaint is barred, limited, or controlled by the Prison Litigation Reform
26 Act.

27 4. Plaintiff failed to properly exhaust his administrative remedies.
28

1 5. Plaintiff has not been deprived of any rights, privileges, or immunities guaranteed by
2 the laws of the United States or by the laws of the State of California.

3 6. Plaintiff was careless, reckless, and negligent in and about the matters and things
4 alleged in the Complaint, and proximately caused and contributed to whatever injury and/or
5 damage he may have sustained, if any, and his recovery should be proportionately reduced
6 according to the percentage of his fault.

7 7. In addition to Plaintiff's own negligence, any damages incurred by Plaintiff were
8 directly and proximately caused and contributed to by other persons. Defendants' liability to
9 Plaintiff, if any, should be allocated to Defendants in direct proportion to any percentage of faults
10 attributable to them.

11 8. Plaintiff committed willful misconduct in and about the matters and things alleged in
12 the Complaint, which proximately caused and contributed to whatever injury and/or damage he
13 may have sustained, if any.

14 9. Defendants have performed all obligations to Plaintiff under any and all statutes
15 described in the Complaint, and any deficiencies in performance were caused by Plaintiff and/or
16 other individuals or entities not named as defendants.

17 10. Plaintiff's Complaint, and each cause of action, is barred by the statute of limitations
18 under the applicable statutory provisions.

19 11. Plaintiff's damages, if any, were caused, in whole or in part, by the negligence or
20 fault of others for which Defendants are not liable or responsible.

21 12. Plaintiff failed to mitigate his damages.

22 13. Defendants did not act with malicious intent or with reckless disregard and therefore
23 are not liable for punitive damages.

24 14. The Eleventh Amendment bars suit for money damages against Defendants in their
25 official capacity.

26 15. Defendants assert that Plaintiff's claims are barred by the unclean-hands doctrine.

27 16. Defendants assert that the Prison Litigation Reform Act bars recovery for mental and
28 emotional damages without a prior showing of physical injury.

17. To the extent that Plaintiff has previously litigated the claims and issues raised in the Complaint, these claims and issues are barred by the doctrines of claim and issue preclusion.

18. Plaintiff's Complaint is couched in conclusory terms, and Defendants cannot fully anticipate all affirmative defenses that may be applicable to this action. Accordingly, the right to assert additional affirmative defenses, to the extent that such affirmative defenses are applicable, is reserved.

DEMAND FOR JURY TRIAL

Defendants demand that this matter be tried by and before a jury to the extent provided by law.

WHEREFORE, Defendants pray that:

1. Judgment be rendered in favor of Defendants and against Plaintiff;
2. Plaintiff take nothing by the Complaint;
3. Defendants be awarded costs of suit; and
4. Defendants be awarded such other and further relief as the Court may deem necessary and proper.

Dated: December 27, 2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
WILLIAM C. KWONG
Supervising Deputy Attorney General

/s/ ALICIA A. BOWER
ALICIA A. BOWER
Deputy Attorney General
*Attorneys for Defendants G. Branch, P.
Santiago, C Hancock, and J. Vera*

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CERTIFICATE OF SERVICE

Case Name: F. Bayramoglu v. M. Cate, et al. No. C 13-1094 YGR (PR)

I hereby certify that on December 27, 2013, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

ANSWER TO COMPLAINT AND DEMAND FOR JURY TRIAL

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On December 27, 2013, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Fikri Bayramoglu
CDCR# C-54604
California Mens Colony
P. O. Box 8101-11-11-L
San Luis Obispo. CA 93409-8101
Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 27, 2013, at San Diego, California.

C. Scott
Declarant

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Signature